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No. 09-11556

IN THE

# Supreme Court of the United States

JOSE TOLENTINO,

*Petitioner*,

*vs.*

NEW YORK,

*Respondent*.

**On Writ of Certiorari to the Court of Appeals of New York**

## BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF RESPONDENT

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## QUESTION PRESENTED

Whether the exclusionary rule applies to preexisting government records obtained after an allegedly unlawful traffic stop, where the only link between the two is that the police learned the petitioner's identity as a result of the stop?

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## BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF RESPONDENT

## INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The petitioner in this case seeks to suppress evidence that was already in the government's possession

1. The parties have consented in writing to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* CJLF made a monetary contribution to its preparation or submission.

before the challenged stop. Suppression in this context would serve to give criminals a free pass from past criminal transgressions, while adding little to the exclusionary rule's primary purpose of deterrence. This unnecessary expansion of the rule is contrary to the interests of justice CJLF was formed to protect.

## SUMMARY OF FACTS AND CASE

On the evening of New Year's Day in 2005, New York City police stopped a car for playing music too loudly. *People* v. *Tolentino*, 14 N. Y. 3d 382, 383, 926 N. E. 2d 1212, 1213 (2010). Jose Tolentino was the driver. *Ibid.* After the police learned Tolentino's name, they discovered through a Department of Motor Vehicles (DMV) records check that his driver's license was suspended and that he had at least 10 suspensions from at least 10 different dates. *Ibid.* Tolentino was arrested and charged with aggravated unlicensed operation of a motor vehicle in the first degree. *Ibid.*

Prior to trial, Tolentino moved to suppress his driving record and any statements made after his arrest, arguing the traffic stop was illegal and so the record and statements, elicited as a result of the traffic stop, were "suppressible fruit of a Fourth Amendment violation." *Id.*, at 384, 926 N. E. 2d, at 1213-1214. See also *infra*, at 8. The trial court denied the motion to suppress without an evidentiary hearing on the grounds that he did not possess a legitimate expectation of privacy in the DMV records and that such records do not constitute suppressible fruits. J. A. 78a. Tolentino pleaded guilty to the crime as charged. *Ibid.* New York law permitted him to appeal the suppression ruling despite the plea, see Brief for Respondent 5, n. 3, and the appellate court affirmed. *People* v. *Tolentino*, 59 App. Div. 3d 298, 873 N. Y. S. 2d 602 (2009).

The New York Court of Appeals granted Tolentino permission to appeal and affirmed. *Tolentino*, 14 N. Y. 3d, at 384, 926 N. E. 2d, at 1214. The court held that under the United States Supreme Court case of *INS* v. *Lopez-Mendoza*, 468 U. S. 1032 (1984), and several federal circuit cases, Tolentino's DMV records were "not suppressible as the fruit of the purportedly illegal stop." *Tolentino*, 14 N. Y. 3d, at 384-386, 926 N. E. 2d, at 1214-1215. The court also noted that the DMV records were already in the government's possession, citing *United States* v. *Crews*, 445 U. S. 463, 475-477 (1980), for the principle that "[t]he exclusionary rule enjoins the Government from benefitting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality." *Id.*, at 386, 926 N. E. 2d, at 1215.

The court went on to find that the purpose of the exclusionary rule would not be achieved by suppressing the identity evidence at issue because the social costs of suppression were great and the deterrence benefits minimal. *Tolentino*, 14 N. Y. 3d, at 386-387, 926 N. E. 2d, at 1216. Even if such evidence were subject to suppression, the court reasoned, because the government could start over and proceed with admissible identity evidence, the result of suppression would "be merely to postpone a criminal proceeding." *Id.*, at 387, 926 N. E. 2d, at 1216 (quoting *United States* v. *Farias-Gonzalez*, 556 F. 3d 1181, 1189 (CA11 2009)). The court also distinguished the identity evidence at issue from fingerprint evidence in cases where the prints were not previously in the government's possession and were used to link the defendant to the crime scene. *Id.*, at 387-388, 926 N. E. 2d, at 1216 (distinguishing *Davis* v. *Mississippi*, 394 U. S. 721, 724 (1969) and *Hayes* v. *Florida*, 470 U. S. 811 (1985)).

Neither the New York Court of Appeals nor any lower court adjudicated the lawfulness of the initial traffic stop.

This Court granted certiorari on November 15, 2010.

## SUMMARY OF ARGUMENT

The exclusionary rule serves to suppress only the "products" of police wrongdoing. A person's identity, records already in the government's possession, and the linkage of a particular person to his or her records are not products of police wrongdoing and therefore not within the purview of the rule.

Independent from a "products" analysis, the constitutional limits on vehicle stops seek to protect a driver's liberty and limited privacy interests. Notably absent from these interests is a driver's interest in anonymity. Given the heavily regulated nature of motor vehicles, a person engaged in driving a vehicle on a public street has no reasonable expectation of anonymity.

The exclusionary rule should not be applied where the costs of suppression outweigh the benefits of deterring police misconduct. The availability of suppression for identity and government records would hinder society's compelling interests in fighting crime and bringing offenders to justice. Other well-established bases for suppression and civil liability already provide police with a significant incentive to follow the law, and extension of the exclusionary rule to these types of evidence would add little additional benefit.

Application of the exclusionary rule is inappropriate in this case, and the New York Court of Appeals was correct in so holding.

## ARGUMENT

### 1. The defendant's identity and DMV records are not the "products" of any police wrongdoing and therefore not subject to exclusion.

*A. Crews and Linkage.*

It is well established that "the indirect fruits of an illegal search or arrest should be suppressed when they bear a sufficiently close relationship to [an] underlying illegality."[2] *New York* v. *Harris*, 495 U. S. 14, 19 (1990). However, it is also "clear that the cases implementing the exclusionary rule 'begin with the premise that the challenged evidence is *in some sense* the product of illegal governmental activity.'" *Nix* v. *Williams*, 467 U. S. 431, 444 (1984) (quoting *United States* v. *Crews*, 445 U. S. 463, 471 (1980)) (emphasis added in *Nix*). This Court has emphasized that the product inquiry is an important "threshold matter" to be determined before analyzing the proximity between the illegality and contested evidence. See *Harris*, *supra*, at 19.

Turning to the case here, it is helpful at this point to parse out the "evidentiary" items at issue. They consist of Tolentino's identity, his DMV records, the link between the two, his presence at trial (if there had been a trial), and the police officer's identification of him as the driver of the car.

Tolentino's presence is not suppressible, even if produced by an illegal arrest. This argument was ex-

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2. Tolentino repeatedly characterizes the traffic stop here as illegal, and claims the New York courts "presumed" the same. See, *e.g.*, Brief for Petitioner 17, 29, 43, 54. No court below made such a finding, however. By deciding the case on the legal issue rather than the factual one, the trial court avoided the need for an evidentiary hearing.

pressly rejected by this Court in *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1039-1040 (1984), *Frisbie* v. *Collins*, 342 U. S. 519 (1952), and *Ker* v. *Illinois*, 119 U. S. 436 (1886). Tolentino concedes as much in his brief. Brief for Petitioner 26.

Tolentino's DMV records also fall outside the scope of the exclusionary rule because they are not a product of any alleged police wrongdoing. They were not "discovered" as a result of police exploitation, because they were already in the government's possession. Though Tolentino claims they were not " 'in official hands' in any meaningful sense," Brief for Petitioner 35, they are indeed a government record, entirely within official control and possession.

The more probative "evidence" that Tolentino has an interest in excluding is the *link* made by the arresting officer between Tolentino's physical person and his DMV records. This link is what would give the records, in Tolentino's words, a "meaningful sense." But before delving into the threshold "product" inquiry, a significant question remains whether this "linking evidence" constitutes an evidentiary item at all—an issue presented to this Court in *United States* v. *Crews*.

*Crews*, like the present case, concerned linkage between the defendant and evidence already known to the government before the challenged seizure: the robbery victim's memory of the face of the perpetrator. See 445 U. S., at 465, 471. Justice Brennan, joined only by Justice Stewart and Justice Stevens on this issue, left open the linkage question. Under the particular facts in *Crews*, Justice Brennan reasoned that, because police already knew the defendant's identity and had some preexisting suspicion linking him to the crime, "the Fourth Amendment violation in this case yielded nothing of evidentiary value that the police did not already have in their grasp." *Id.*, at 475 (footnote omitted).

Justice Powell, joined by Justice Blackmun, joined Justice Brennan's opinion, making it the opinion of the Court, except with respect to the issue just described. On this point, Justice Powell explained he would "reject explicitly, rather than appear to leave open, the claim that a defendant's face can be a suppressible fruit of an illegal arrest," as foreclosed by those cases holding a defendant may be brought to court notwithstanding an illegal arrest. *Crews*, 445 U. S., at 477 (Powell, J., concurring in part) (citing *Frisbie* v. *Collins*, 342 U. S. 519 (1952) and *Ker* v. *Illinois*, 119 U. S. 436 (1886)).

Similarly, Justice White, joined by the Chief Justice and Justice Rehnquist, concurring in the result, opined that *Frisbie* was binding on the suppressibility of a defendant's face. *Crews*, 445 U. S., at 478 (White, J., concurring in result). Justice White hypothesized:

> "Assume that a person is arrested for crime X and that answers to questions put to him without *Miranda* warnings implicate him in crime Y for which he is later tried. The victim of crime Y identifies him in the courtroom; the identification has an independent, untainted basis. I would not suppress such an identification on the grounds that the police had no reason to suspect the defendant of crime Y prior to their illegal questioning and that it is only because of that questioning that he is present in the courtroom for trial." *Id.*, at 478-479.

Justice White added as a final remark that "a majority of the Court agrees that the rationale of *Frisbie* forecloses the claim that respondent's face can be suppressible as a fruit of the unlawful arrest." *Id.*, at 479.

Justice White's hypothetical is on point here. Tolentino was stopped for crime X, playing his music too loudly. The records check implicated him in crime Y, driving with a suspended license. It is only because

of investigatory methods undertaken during the challenged stop[3] that Tolentino was implicated and charged with crime Y. But a majority of this Court found in *Crews* that such a link was not suppressible in a closely analogous situation.

In some circumstances, a police officer's testimony about what he observed during a stop could be a suppressible "fruit." The lineup evidence in *Crews* was considered a product of the illegal arrest, see 445 U. S., at 468, and similarly a police officer's observation during a stop would be a product of the stop. However, the officer's observation of the driver before the stop is not a product and not subject to suppression. See *California* v. *Hodari D.*, 499 U. S. 621, 629 (1991) (evidence abandoned prior to seizure is not "fruit"). In the present case, although defendant initially included "post-seizure observations" in his suppression motion, J. A. 17a, the case was subsequently litigated solely on the DMV records and defendant's statements. See J. A. 78a (trial court); J. A. 96a (initial appeal); J. A. 99a (Court of Appeals).

*B. Fingerprint Analogies.*

Tolentino points to this Court's decisions in *Davis* v. *Mississippi*, 394 U. S. 721 (1969), and *Hayes* v. *Florida*, 470 U. S. 811 (1985), holding that identity evidence, such as fingerprints, is subject to suppression if unlawfully obtained. See Brief for Petitioner 24-25. However, the evidence in this case is distinguishable from the fingerprints in those cases.

In the two cases just cited, fingerprint evidence was generated during unlawful detentions and used to link

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3. The lawfulness of the initial stop remains unresolved. See *supra*, footnote 2.

the defendants to unsolved crimes. *Davis*, 394 U. S., at 722-723, 725; *Hayes*, 470 U. S., at 812-814. The fingerprint evidence linking the defendants did not exist prior to their arrests. Though both men obviously had fingerprints in the physical sense, the transposition of the prints in a form suitable for analysis was entirely " 'come at by exploitation of' " their illegal detentions. See *Wong Sun* v. *United States*, 371 U. S. 471, 488 (1963) (quoting Maguire, Evidence of Guilt 221 (1959)). This Court in *Davis* found the generated fingerprint evidence to be legally indistinguishable from statements or physical items, both recognized suppressible categories of evidence:

> " 'Both similarities and differences of each type of evidence to and from the others are apparent. But all three have the decisive common characteristic of being something of evidentiary value which the public authorities have caused an arrested person to yield to them during illegal detention. If one such product of illegal detention is proscribed, by the same token all should be proscribed.' " *Davis*, 394 U. S., at 724 (quoting *Bynum* v. *United States*, 262 F. 2d 465, 467 (DC Cir. 1958)).

The DMV records in this case are more closely analogous to the fingerprint evidence introduced on retrial in *Bynum* v. *United States*, 274 F. 2d 767 (CADC 1960) (*per curiam*), cited with approval by Justice Brennan in *Crews*. Following suppression of the fingerprints taken during the unlawful arrest, Bynum was reindicted and retried using an older set of prints that had been in the government's possession all along. These prints were admissible. See *Crews*, 445 U. S., at 476 (opinion of Brennan, J.).

The DMV records, like the earlier prints of Bynum, is not a product of the stop. The only "product," in the most technical meaning of the term, is the ability to

link the particular person to his or her records, which, as discussed above, is not an item of evidentiary value at all. Thus *Davis* and *Hayes* are not dispositive.

Also inapposite are the substantive "stop and identify" cases, such as *Brown* v. *Texas*, 443 U. S. 47 (1979). See *Hiibel* v. *Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U. S. 177, 183-185 (2004) (summarizing cases). These are not exclusionary rule cases at all but rather cases involving substantive guilt of an offense. In *Brown*, lawfulness of the stop was an element of the offense, see 443 U. S., at 49, n. 1, and the Court was effectively reviewing the trial court's holding on that element. See *id.*, at 50. Brown's conviction was reversed because he was innocent of any offense, not because evidence of his guilt was inadmissible. See *id.*, at 53.

Citing *Brown*, petitioner contends it would be anomalous for the law to forbid a stop without reasonable suspicion and yet allow prosecution for a crime that would not have been discovered without the stop. See Brief for Petitioner 19-20. Yet the abduction cases of *Ker*, *Frisbie*, and *United States* v. *Alvarez-Machain*, 504 U. S. 655 (1992), illustrate that an illegal act in the course of bringing a defendant to trial does not universally result in an exemption from prosecution. The exclusionary rule requires only suppression of a particular item of evidence obtained through an illegal search or seizure.

No item of evidence that would have been introduced at a trial and that was at issue before the New York Court of Appeals was the product of the challenged stop. The DMV records are not a product because the government had them before the stop. The defendant's identity is not evidence. The link between the two is also not evidence. Suppression of the records was correctly denied.

## II. Driver identification evidence should not be suppressible under the exclusionary rule because the rule against illegal traffic stops does not seek to protect the identity of a driver on a public road.

There is a second and independently sufficient reason to deny suppression in this case. Identity of a driver, and the link to a preexisting record provided by identity, are not subject to suppression because the constitutional limits on traffic stops do not seek to protect a driver's anonymity.

### *A. The Exclusionary Rule's "Bear Some Relation" Requirement.*

The "fruit of the poisonous tree" doctrine does not stand as an impenetrable barrier between a Fourth Amendment violation and admissible evidence. To the contrary, suppression "has always been our last resort, not our first impulse." *Hudson* v. *Michigan*, 547 U. S. 586, 591 (2006). Even in those instances where there is direct causation between the police illegality and the discovered evidence, this Court has long "eschewed any *per se* or 'but for' rule." See *Dunaway* v. *New York*, 442 U. S. 200, 217 (1979) (quoting *Brown* v. *Illinois*, 422 U. S. 590, 600 (1975)).

Application of the exclusionary rule is limited in scope, with an important focus on the purpose of the rule. In other words, "[t]he penalties visited upon the Government, and in turn upon the public, because its officers have violated the law must bear some relation to the purposes which the law is to serve." *United States* v. *Ceccolini*, 435 U. S. 268, 279 (1978). This Court has therefore declined to extend the exclusionary rule to those situations where the constitutional rule violated by the police was not intended to protect the defendant's interest at issue.

Several cases illustrate this principle. In *New York* v. *Harris*, 495 U. S. 14, 21 (1990), this Court refused to apply the exclusionary rule to a defendant's station-house confession obtained after an illegal arrest. In that case, police had probable cause to arrest Harris, but they did so in Harris's home without an arrest warrant in violation of the rule announced in *Payton* v. *New York*, 445 U. S. 573, 590 (1980). *Harris*, *supra*, at 16. However, the purpose of the *Payton* rule is to "dr[aw] a line at the entrance to the home" and to " 'interpose the magistrate's determination of probable cause' to arrest before the officers could enter a house to effect an arrest." *Id.*, at 18 (quoting *Payton*). The evidence Harris sought to have suppressed—a confession made at the police station after the arrest—did not fall within the sphere of interests sought to be protected by the constitutional rule violated. Thus, it was not appropriate to apply the exclusionary rule to the confession. *Id.*, at 17.

Similarly, in *Hudson* v. *Michigan*, this Court determined the exclusionary rule does not serve to suppress evidence discovered after a violation of the knock-and-announce rule. The purpose of the common law rule is the protection of human safety, property, and privacy interests threatened by an unannounced entry. 547 U. S., at 594. The evidence sought to be suppressed—evidence seized pursuant to a search warrant—fell outside this protection. *Ibid.* As a result, notwithstanding an unannounced police entry, subsequently discovered evidence was not suppressible under the exclusionary rule. "Since the interests that *were* violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable." *Ibid.*

In sum, applicability of the exclusionary rule requires two threshold inquiries. First, the constitutional

rule allegedly violated by police is analyzed to discern what interests it seeks to protect. Second, it must be determined whether the item of evidence sought to be suppressed falls within that category of protected interests. If the answer to the second inquiry is no, the evidence should not be suppressed because the basic purpose of the exclusionary rule would not be served.

Here, the interests protected by the rule against unjustified traffic stops do not include any right to driver anonymity. Identity evidence, even if come to by police wrongdoing, should not be suppressible under the exclusionary rule.

*B. The Rule Against Illegal Traffic Stops.*

A traffic stop is a recognized seizure and subject to the constraints of the Fourth Amendment. See *Whren* v. *United States*, 517 U. S. 806, 809-810 (1996); *Delaware* v. *Prouse*, 440 U. S. 648, 653 (1979); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 556 (1976). Generally speaking, "[t]he essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions.' " *Prouse*, *supra*, at 653-654 (quoting *Marshall* v. *Barlow's, Inc.*, 436 U. S. 307, 312 (1978)) (internal footnotes omitted).

It should be noted at the outset that the expectation of privacy in the context of vehicles is reduced. For example, the Fourth Amendment's warrant requirements are significantly more flexible with respect to vehicles both because of their "ready mobility" and the "pervasive regulation of vehicles capable of traveling on the public highways." *California* v. *Carney*, 471 U. S. 386, 390-392 (1985). These less strict standards apply even to containers within the vehicle, *California* v.

*Acevedo*, 500 U. S. 565, 479-581 (1991), including those belonging to passengers, *Wyoming* v. *Houghton*, 526 U. S. 295, 303 (1999), because a vehicle "seldom serves as one's residence or as the repository of personal effects." *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality opinion).

All protection is not lost, however. "[P]eople are not shorn of all Fourth Amendment protection . . . when they step from the sidewalks into their automobiles." *Prouse*, 440 U. S., at 663. Liberty and privacy interests of drivers are threatened by unlawful or arbitrary traffic stops. Specifically, traffic stops "interfere with freedom of movement, are inconvenient,[] consume time," and "may create substantial anxiety." *Id.*, at 657. Drivers also maintain some expectation of privacy, albeit lessened, in their vehicles. As this Court has noted, "[u]ndoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel." *Id.*, at 662. A rule mandating a minimum standard of reasonable suspicion to effect a traffic stop is generally required, therefore, to protect these interests. Cf. *Brendlin* v. *California*, 551 U. S. 249, 263, n. 7 (2007) (noting cases for the principle that police must have reasonable suspicion or probable cause to conduct a lawful traffic stop).

*C. Identification Evidence.*

Having outlined the scope of the protection against unlawful traffic stops, the discussion should now turn to the evidence sought to be suppressed, *i. e.*, petitioner's identity linking him to the DMV driving records.[4]

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4 As discussed above, however, there is a significant question as to whether the "linking evidence" Tolentino seeks to suppress is an item of evidentiary value at all. See Part I, *supra*.

This Court has already intimated that a person does not have a protectable interest in his or her identity. In *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1039 (1984), this Court stated, "The 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest . . . ."[5] A defendant's presence is also not a "suppressible 'fruit.' " *United States* v. *Crews*, 445 U. S. 463, 474 (1980).

In the context of drivers, the privacy interest in identity of one on a public roadway is minimal, at best. There are numerous vehicle regulations a driver must follow that render identity available to government officials, including those pertaining to information gleaned from the vehicle's exterior. Relevant to the circumstances here, for instance, the New York Vehicle and Traffic Law requires an owner of a motor vehicle to submit his or her name and residence in order to register the vehicle, N. Y. Veh. & Traf. Law § 401(1)(b)(c), an operator of a vehicle to "furnish to [any] magistrate, inspector, peace office or police officer . . . all information required concerning his license to operate," N. Y. Veh. & Traf. Law § 401(4), and that a distinctive license plate corresponding to a certificate of registration be kept "clean and in a condition so as to be easily readable," N. Y. Veh. & Traf. Law § 402(1)(a), (b) (which will naturally correspond to the registered owner).

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5. *Amicus* acknowledges that the scope of this sentence is the crux of the instant case, and that several courts have interpreted the language as merely a jurisdictional statement rather than evidence exempted from the exclusionary rule. However several federal circuits have noted this Court's "exceptionally broad statement, using the rarely employed word 'never' " conveying that identity is indeed not a protectable interest. See *United States* v. *Bowley*, 435 F. 3d 426, 430 (CA3 2006) (quoting *United States* v. *Del Toro Gudino*, 376 F. 3d 997, 1000-1001 (CA9 2004)).

While there is a distinction between the owner of a vehicle and the driver of a vehicle at a particular time, this information usually limits the universe of potential drivers to either the registered owner or someone granted permission to drive by the registered owner. Furnishing information about one's identity is therefore a *requirement* of exercising the privilege of driving, and simply getting behind the wheel and entering a roadway releases this information.

The physical characteristics of a person in the driver's seat on a public road are also inherently public. Given the transparency of the windshield and the front side windows of a vehicle, a driver's appearance is plainly visible to those outside. In fact, it is not uncommon for state law to limit the permissible tinting of the windshield and front side windows, thereby *prohibiting* obstructed views of the driver. See, *e.g.*, N. Y. Veh. & Traf. Law § 375(12-a)(b)(1-2) (requiring the windshield and front windows to be composed of material with a light transmittance of no less than 70 percent), Cal. Veh. Code § 26708(d)(2) (requiring the side windows to have a minimum light transmittance of 70 percent); Va. Code Ann. § 46.2-1052(C)(2) (requiring the side windows to have minimum light transmittance of 50 percent). Notably, these limitations are generally more restrictive with respect to the *front* windows, surrounding the driver, as opposed to the side windows for the back seat, see Cal. Veh. Code § 26708(b)(4) (limitations do not apply to "[s]ide windows that are to the rear of the driver"); Va. Code Ann. § 46.2-1052(C)(1) (greater light restrictions permitted for the back side windows than front side windows), and so the privacy interests in the front part of the vehicle are even less than those in the back.

Simply put, a driver has no reasonable expectation of anonymity. Even if there were a *de minimis* interest

in anonymity, it certainly does not fall within the interests protected by the constitutional limits on traffic stops. The discovery of a driver's name has no effect on the driver's liberty. Cf. *Prouse*, 440 U. S., at 657. Nor would it interfere with the limited privacy interests a driver maintains in his or her vehicle. See *Carney*, 471 U. S., at 390-392. Because the interests protected by the rule against suspicionless traffic stops have no bearing on a driver's identity, suppression would not vindicate rights of the driver violated by the unlawful stop.

Petitioner accurately states that a suspicionless vehicle stop for the sole purpose of checking a driver's identification is unreasonable under the Fourth Amendment, see Brief for Petitioner 18-19, and that any argument to the contrary was foreclosed by *Prouse*, *supra*. In that case, this Court balanced the state's interest in ensuring that only qualified drivers and safe vehicles inhabited the roads with a driver's liberty and limited privacy interests. 440 U. S., at 658-661. The Court concluded the "marginal contribution to roadway safety possibly resulting from a system of spot checks" did not justify random traffic stops to check for compliance with the state's vehicle laws. *Id.*, at 661-663. But while the specific investigatory method at issue there involved ascertaining a driver's identity, the Court's decision did not turn on the existence of any interest in identity. Rather, the interests considered in the weighing process were the driver's freedom of movement, possible anxiety resulting from a suspicionless stop, and concerns of time and convenience. See *id.*, at 657. Any interest in *identity* was simply not part of the equation.

Moreover, the occurrence of a Fourth Amendment violation does not automatically trigger application of the exclusionary rule, as discussed *supra* and consistently confirmed by this Court. See, *e.g.*, *Hudson* v. *Michigan*, 547 U. S. 586, 591 (2006); *Dunaway* v. *New*

*York*, 442 U. S. 200, 217 (1979); *Wong Sun* v. *United States*, 371 U. S. 471, 488 (1963). The issue here is application of the exclusionary rule upon a finding of a constitutional violation. Because application of the rule to these circumstances would not vindicate any interests violated by an illegal traffic stop, exclusion should not apply and the New York Court of Appeals was correct in so holding.

## III. The costs of applying the exclusionary rule to identity evidence outweighs the benefits.

"[T]he application of the [exclusionary] rule has been restricted to those areas where its remedial objectives are thought to be most efficaciously served." *United States* v. *Calandra*, 414 U. S. 338, 348 (1974). "[T]he exclusionary rule is not an individual right and applies only where it '"result[s] in appreciable deterrence,"'" *Herring* v. *United States*, 555 U. S. 135, 129 S. Ct. 695, 700, 172 L. Ed. 2d 496, 504 (2009) (quoting *United States* v. *Leon*, 468 U. S. 897, 909 (1984)). After balancing the costs and benefits of applying the rule, this Court has declined to extend the rule in a variety of contexts. See, *e.g.*, *Herring*, 129 S. Ct., at 703, 172 L. Ed. 2d, at 508 ("evidence . . . obtained in objectively reasonable reliance on a subsequently recalled warrant"); *Illinois* v. *Krull*, 480 U. S. 340, 352-353 (1987) (evidence discovered pursuant to a statute, presumptively valid at the time but later pronounced unconstitutional); *Leon*, *supra*, at 922 (evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant); *INS* v. *Lopez-Mendoza*, 468 U. S. 1032, 1050 (1984) (civil deportation proceedings); *Calandra*, *supra*, at 354-355 (grand jury proceedings); *Walder* v. *United States*, 347 U. S. 62, 65 (1954) (impeachment of a defendant).

Exclusion of a suspect's identity would significantly hinder the prosecution of crime by giving individuals, such as Tolentino, a free pass to avoid their past criminal transgressions. And because suppression of a suspect's identity will not add to the deterrence of wrongful police work, the costs of applying the exclusionary rule to the circumstances here far outweigh the benefits.

*A. Costs.*

The costs to effective law enforcement here are significant. Indeed, this Court has recognized "society's compelling interest in finding, convicting, and punishing those who violate the law." *Moran* v. *Burbine*, 475 U. S. 412, 426 (1986); see also *United States* v. *Hensley*, 469 U. S. 221, 229 (1985) (recognizing the "strong government interest in solving crimes and bringing offenders to justice"). The strength of this interest is also confirmed in cases outlining the applicability of the exclusionary rule, where the "drastic and socially costly" nature of evidence suppression has been recognized. See, *e.g.*, *Nix* v. *Williams*, 467 U. S. 431, 442 (1984).

Suppression of a suspect's identity and, likewise, records learned of from that identity, pose a serious threat to law enforcement efforts. A graver set of facts than the ones in this case can easily be imagined: police effect a traffic stop on less than reasonable suspicion or probable cause. As is customary during traffic stops, the officer asks for the driver's identification and may run a check for outstanding warrants. The officer learns that the driver has several outstanding warrants for serious felonies. If Tolentino's argument is accepted and suppression applicable, the driver's identity and the resulting warrants would be inadmissible as a result of the triggering illegal traffic stop. "It would be startling to suggest that because the police illegally stopped an

automobile, they cannot arrest an occupant who is found to be wanted on a warrant—in a sense requiring an official call of 'Olly, Olly, Oxen Free.'" *United States* v. *Green*, 111 F. 3d 515, 521 (CA7 1997). Such suppression would have a significant and deleterious effect on criminal investigations, as it would essentially require a police officer to turn a blind eye to a suspect found with outstanding warrants. This type of free pass directly contradicts society's "compelling interest" in holding offenders accountable for their actions.

Several courts have attempted to deal with this issue by analyzing the discovered warrants under the "intervening circumstances" doctrine. See, *e.g.*, *United States* v. *Gross*, 624 F. 3d 309, 319-322 (CA6 2010); *United States* v. *Green*, 111 F. 3d, at 521-522; *State* v. *Frierson*, 926 So. 2d 1139, 1144-1145 (Fla. 2006). The shortfall of this analysis, however, is that an officer's bad faith and intent in effecting the stop threaten to play a role. See, *e.g.*, *Gross*, *supra*, at 325-328 (Gibbons, J., concurring in part and dissenting in part); *Green*, *supra*, at 523; *Frierson*, *supra*, at 1144-1145. A rule that this type of evidence is beyond the reach of the exclusionary rule altogether is more in accord with this Court's Fourth Amendment jurisprudence. "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." See *Whren* v. *United States*, 517 U. S. 807, 813 (1996).

*B. Benefits.*

Conversely, the potential benefits here are minimal. Despite some language in older cases stating other rationales, the exclusionary rule is justified in modern cases solely as a deterrent to police misconduct. See Brief for Criminal Justice Legal Foundation as *Amicus Curiae* in *Davis* v. *United States*, No. 09-11328, p. 7. "The core rationale consistently advanced by this Court

for extending the exclusionary rule to evidence that is the fruit of unlawful police conduct has been that this admittedly drastic and socially costly course is needed to deter police from violations of constitutional and statutory protections." *Nix* v. *Williams*, 467 U. S. 431, 442-43 (1984). But this Court has made clear "it does not follow from the emphasis on the exclusionary rule's deterrent value that 'anything which deters illegal searches is thereby commanded by the Fourth Amendment,'" *United States* v. *Leon*, 468 U. S. 897, 910 (1984) (quoting *Alderman* v. *United States*, 394 U. S. 165, 174 (1969)), and thus the exclusionary rule should not be extended further than necessary if deterrence can be achieved by limited suppression. See, *e.g.*, *New York* v. *Harris*, 495 U. S. 14, 20-21 (1990) (declining to suppress a stationhouse confession after a *Payton* violation when exclusion of evidence gathered from the illegal in-home arrest would vindicate the purpose of the rule).

Some courts have reasoned, and Tolentino warns, Brief for Petitioner 29, 40, that if suppression is not available for information obtained during an unlawful traffic stop, such as a driver's outstanding warrants discovered from the driver's name, police will have an incentive to violate the law. See, *e.g.*, *Gross*, 624 F. 3d, at 320-321. This argument fails, however, because "the value of deterrence depends upon the strength of the incentive to commit the forbidden act." *Hudson* v. *Michigan*, 547 U. S., at 596. Nearly all other evidence obtained during an illegal stop will fall subject to the exclusionary rule, and any additional deterrence gained from suppressing a driver's identity is minimal.

In the more typical traffic stop/evidence suppression scenario, an unlawful traffic stop results in the discovery inside the vehicle of evidence that must be suppressed. See, *e.g.*, *Delaware* v. *Prouse*, 440 U. S. 648,

650 (1979) (marijuana discovered on vehicle floor during illegal stop); *United States* v. *Urrieta*, 520 F. 3d 569, 572 (CA6 2008) (firearms and fraudulent identification cards discovered in vehicle during unlawful extension of traffic stop). *United States* v. *Lopez-Soto*, 205 F. 3d 1101, 1103 (CA9 2000) (400 kilograms of marijuana discovered in car and trunk during unlawful traffic stop). It would make little sense to argue a driver's expectation of privacy—albeit, a lessened one—does not include these items, and the exclusionary rule would naturally apply to suppress these items as fruits, come at by exploitation of police illegality. See *Wong Sun* v. *United States*, 371 U. S. 471, 487-488 (1963).

The mere fact of a driver's name, in most cases, would be useless to a police officer. It would be irresponsible investigatory work for an officer to effect a questionable traffic stop and run the risk of discovering significant, but inadmissible evidence, simply to learn the driver's name. The assumption that police officers would turn to "a new form of police investigation" of conducting a suspicionless stop for this purpose, see *Gross*, 624 F. 3d, at 320-321, is an argument for a "speculative and undoubtedly minimal advance in the deterrence of police misconduct" that this Court should "decline to embrace." See *Calandra*, 414 U. S., at 351-352.

If police did turn to such an improper investigatory method, other sources of punishment would befall them. A pattern of illegal stops would leave local governments subject to civil liability and accompanying attorney's fees, without the shield of qualified immunity. See *Los Angeles County* v. *Humphries*, 562 U. S. __, 131 S. Ct. 447, 452 (2010) (noting breadth of "policy or custom"). Individual officers conducting suspicionless traffic stops could face internal disciplinary action, which certainly has a deterrent effect given its threat to

"limit successful careers." See *Hudson*, 547 U. S., at 599. They would also be subject to personal civil liability, given that *Prouse* is clearly established law. It would be in the officer's interest and that of the respective employing agency to comply with traffic stop limitations.

The balancing of these interests demonstrates that "[r]esort to the massive remedy of suppressing evidence of guilt is unjustified." See *Hudson*, 547 U. S., at 599. Identification evidence, as well as preexisting government records accessed with identification evidence, should join those items this Court has already recognized as beyond the scope of suppression.

## CONCLUSION

The decision of the Court of Appeals of New York should be affirmed.

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Respectfully submitted,

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